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May 18, 2015

To: Mayor Michael D. Antonovich
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai 
Interim Chief Executive Officer

PROPOSED COUNTY GUIDELINES FOR FUTURE GRATIS LEASES (ITEM NO. 5, AGENDA OF FEBRUARY 17, 2015)

On February 17, 2015, the Board approved a motion by Supervisors' Kuehl and Ridley-Thomas, instructing the interim Chief Executive Officer, with input from the Internal Services Department and the Department of Public Works to: 1) research best practices for future leases issued under California Government Code Section 26227; and 2) report back to the Board within 90 days on recommendations to establish new Board of Supervisors policies to standardize the terms and conditions of future leases under section 26227. More specifically, the Board directed that the criteria consider the programmatic contributions of nonprofit lessees and provide guidance on:

- length of lease;
- lease renewals;
- lease costs;
- requirement to identify funding sources for facility maintenance prior to Board consideration;
- requirement to provide health, educational, public safety, social, and human services programs;
- building security needs;
- liability; and
- responsibility for deferred and ongoing facilities maintenance.

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In response to the Board's motion, this Office met with representatives from the Internal Services Department (ISD), Department of Public Works (DPW), County Counsel, and representatives from the Board Offices to: 1) discuss the above criteria and Government code elements of 26227; 2) review and assess current County guidelines and procedures in place for leases, including gratis leases; and 3) review of other County jurisdictions practices relative to gratis leases to develop recommended guidelines of future gratis leases for the Board's consideration. This report provides the Board with recommendations on the above items. This report refers to leases, which should include license agreements as a subset.

It should be noted that special districts governed by the Board were not part of our review as Government Code Section 26227 does not apply to special districts, which are separate political entities.

Background

The County of Los Angeles (County) provides multi-year licenses and leases of surplus County property, including County office buildings, to qualified non-profit and public agencies, in exchange for the agencies' commitment to serve the social-program needs of County residents pursuant to California Government Code Section 26227, Attachment I-A. The County may allow such use of its surplus property based on California Government Code Section 26227, which states, in relevant part:

The board of supervisors may make available to a public agency, nonprofit corporation, or nonprofit association any real property of the county which is not, and during the time of possession, will not be needed for county purposes, to be used to carry out the programs, upon terms and conditions determined by the board of supervisors to be in the best interests of the county and the general public.

The code states such programs shall include, but are not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, legal services, the aged, and the physically, mentally, and financially handicapped.

California Government Code section 25521, Attachment I-B, establishes the outer parameters for the length of County leases and renewals. Under Government Code section 25521, the Board can instruct the Chief Executive Officer to negotiate and execute a lease of County-owned property, pursuant to Government Code section 25537 and Los Angeles County Code section 2.08.150, for any duration of term up to a maximum of 99 years. Historically, the Board has exercised its authority under these provisions for gratis leases with non-profit and public agencies.

Current Practice

It is the County's practice to make available at fair market value (FMV) to other public agencies surplus County property, or to auction surplus property at FMV to private parties. The disposition of surplus property in recent years has been primarily limited to vacant land, whereas surplus facilities have been primarily leased at below-market rents or on gratis terms. The Chief Executive Office Real Estate Division (CEO-RED) currently manages approximately 55 below-market and gratis leases.

Gratis leases are currently initiated by County departments and Board offices as part of an opportunity to enhance programs and services provided to the community. After vetting the provider and programs, as well as identifying space and gratis terms, the County departments and Board offices engage CEO-RED for final processing of the transaction. CEO-RED in collaboration with County Counsel prepares the necessary leases and forms. When the transaction is below market or gratis, the appropriate Board office sponsors a motion to effectuate the transaction.

As part of our review and analysis, we implemented the following course of actions: 1) reviewed and assessed the County's current lease practices; 2) consulted with neighboring counties real estate divisions to discuss their overall approach to gratis leases, as well as identified their leasing procedures and effective practices; and 3) developed preliminary guidelines and recommendations for the Board's consideration based on the criteria noted in the Board's February 17, 2015 motion.

It should be noted that several governmental entities share a common goal to establish uniform guidelines that will assist the Board in the decision-making process for awarding gratis leases. Many of these entities currently lack standardized guidelines or procedures. Santa Clara County has embarked on an initiative to implement formal policies and procedures for awarding gratis leases. The recommendations contained herein include some of the features outlined in Santa Clara's initiative, such as the cost-benefit analysis of below-market and gratis leases.

Proposed Guidelines and Procedures

Our efforts have identified categories for assessing potential gratis leases. These categories are: 1) single-tenant users; and 2) co-location tenants, including the following subset criteria: a) County contract vendors; b) non-County contract vendors; and c) square footage of proposed use.

Assessing a potential gratis lease based on the recommended categories should produce consistent lease terms and outcomes.

A standardize assessment, similar to Santa Clara County's, including a cost-benefit analysis, should guide the County's due diligence process. This assessment will address the following:

- Verification by the appropriate County department of the legal status of the proposed tenant and confirmation of the service expectations (health, educational, public safety, social, and/or human services related programs);
- Determination by the appropriate County department of the value of services being received by the County from the proposed tenant;
- Determination by CEO-RED of operating expenses and any required tenant improvements of the proposed tenancy;
- Determination of fair market rent and appropriate below-market rent scenarios, if applicable; and
- Calculation of any tenant improvements or capital improvements performed and funded by a non-profit as an offset of rent or operating expenses.

This assessment should be completed prior to the Board approving a gratis lease. The terms and conditions of the lease will be based on the results and recommendations developed during the assessment process and will include a unilateral cancellation option, whereby the County has the right to cancel leases due to non-performance. Consistent with past County practices, every effort should be made to eliminate or minimize the County's liability and expense obligations associated with a gratis lease.

The proposed guidelines for gratis leases are based on the categories as follows:

CATEGORY	LEASE TERM	LEASE RATE	OPERATING EXPENSE	EXTRAORDINARY MAINTENANCE
If Tenant solely occupies the facility	5-10 Years	Cost Benefit Analysis	Tenant pays utilities, insurance, janitorial and minor maintenance.	County obligation
If Tenant co-locates with other County department, and: A. Tenant contracts with a County department to provide a social services program; or	1-5 Years	Cost Benefit Analysis	Tenant pays utilities, insurance, janitorial and minor maintenance.	County obligation
B. Tenant does not have a social services program contract, and: 1. Proposed use < 3,000 square feet; OR	1-5 Years	Cost Benefit Analysis	Tenant pays utilities & insurance. County department pays janitorial and maintenance.	County obligation
2. Proposed use > 3,000 square feet	1-5 Years	Cost Benefit Analysis	Tenant pays utilities, insurance, janitorial and minor maintenance.	County obligation

The involvement of County departments will be critical to making the assessment and proposed guidelines effective tools. Also, County departments will conduct periodic assessments and determine if the non-profit or public agency continues to perform services at an acceptable level. CEO-RED will provide annual Gratis Lease and Surplus Property reports to the Board of Supervisors.

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Conclusion

The County will continue to augment its social and human services needs by providing County services through gratis lease agreements with non-profit and public agencies, in exchange for their commitment to serve the social program needs of County residents. Therefore, it is recommended that the Board implement the suggested gratis lease guidelines outlined in this report, and direct the Chief Executive Officer, in consultation with County Counsel, to develop a Gratis Lease Guidelines Policy for adoption by the Board.

If you have any questions or need additional information, please contact Chris Montana, CEO Real Estate Division, at (213) 974-4200.

SAH:JJ:TT:CMM
AMT:KW:os

Attachments (2)

c: Executive Office, Board of Supervisors
County Counsel
Internal Services
Public Works

California Government Code Section 26227

"The board of supervisors of any county may appropriate and expend money from the general fund of the county to establish county programs or to fund other programs deemed by the board of supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons.

The board of supervisors may contract with other public agencies or private agencies or individuals to operate those programs which the board of supervisors determines will serve public purposes. In the furtherance of those programs, the board of supervisors may make available to a public agency, nonprofit corporation, or nonprofit association any real property of the county which is not, and during the time of possession, will not be needed for county purposes, to be used to carry out the programs, upon terms and conditions determined by the board of supervisors to be in the best interests of the county and the general public, and the board of supervisors may finance or assist in the financing of the acquisition or improvement of real property and furnishings to be owned or operated by any public agency, nonprofit corporation, or nonprofit association to carry out the programs, through a lease, installment sale, or other transaction, in either case without complying with any other provisions of this code relating to acquiring, improving, leasing, or granting the use of or otherwise disposing of county property.

A program may consist of a community support program including a charitable fund drive conducted in cooperation with one or more nonprofit charitable organizations if the board of supervisors deems a program will assist in meeting the social needs of the population of the county. If the board establishes a program, the officers and employees of the county shall have the authority to carry out the program, using county funds and property if authorized by the board. During working hours, a program may include direct solicitation by county officers and employees and the assignment of officers and employees to attend or assist in the administration of program activities if authorized by the board."

California Government Code Section 25521

"The board of supervisors of any county may sell or lease for a term not exceeding 99 years, without a vote of the electors of the county first being taken, any real property belonging to the county."